

Introduced by Senator Perata

February 23, 2007

An act to amend Sections 94808, 94809, 94854, and 94952 of, and to amend and renumber Section 94723 of, the Education Code, relating to private postsecondary education.

LEGISLATIVE COUNSEL'S DIGEST

SB 823, as introduced, Perata. Private postsecondary education.

(1) The Private Postsecondary and Vocational Education Reform Act of 1989 generally sets minimum standards of instructional quality, ethical and business practices, health and safety, and fiscal responsibility for private postsecondary and vocational educational institutions, as defined. The act establishes in the Department of Consumer Affairs the Bureau for Private Postsecondary and Vocational Education, which, among other things, is required to review and investigate all institutions, programs, and courses of instruction approved under the act.

The act establishes the Private Postsecondary and Vocational Education Administration Fund and the continuously appropriated Student Tuition Recovery Fund. The act specifies that certain violations of its provisions are subject to civil penalties and that certain willful violations of the act are punishable as crimes. The act includes provisions defining numerous terms for the purposes of the act.

This bill would recast and revise the provision that defines "correspondence school" or "home study school" for the purposes of the act, and would replace those terms with "distance learning school," as defined.

(2) The act requires each institution that is approved to operate under its provisions to report to the bureau specified information about its educational programs.

This bill would require these institutions to submit these reports in specified electronic formats. The bill would further require these reports to contain additional specified information relating to students attending the institutions.

(3) The act requires certain institutions approved to operate under its provisions to submit specified information regarding the placement of their students in employment.

This bill would revise the definition of “employment” for these purposes to specify that certain hourly minimums in that definition apply to full-time or part-time employment with a single employer.

(4) The act authorizes the Attorney General, or any district attorney or city attorney, to make investigations to carry out its provisions.

This bill would authorize these officials to obtain from the bureau, without charge, any documents related to an institution that may be useful to an investigation of that institution.

(5) A provision of the act provides for it to become inoperative on July 1, 2007, and provides for its repeal on January 1, 2008.

The bill would declare that it would not become operative unless and until another statute amending this provision to change the date of the repeal of the Private Postsecondary and Vocational Education Reform Act of 1989 to a date that is after January 1, 2008, is chaptered and becomes operative.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 94723 of the Education Code is amended
2 and renumbered to read:
3 ~~94723.~~
4 94728.7. “~~Correspondence school~~” or “~~home study~~” “*Distance*
5 *learning school*” means any institution that provides
6 ~~correspondence~~ lessons for study and completion by a student at
7 a location separate from the institution, *whether by correspondence*
8 *or the Internet or other electronic means*, including those
9 institutions which offer that instruction ~~by correspondence~~ in
10 combination with in-residence instruction.
11 SEC. 2. Section 94808 of the Education Code is amended to
12 read:

1 94808. (a) Each institution approved to operate under this
2 chapter shall ~~be required to~~ report to the bureau, by July 1 of each
3 year, or another date designated by the bureau, the following
4 information for educational programs offered in the prior fiscal
5 year:

6 (1) The total number of students enrolled, by level of degree or
7 type of diploma program.

8 (2) The number of degrees and diplomas awarded, by level of
9 degree.

10 (3) The degree levels offered.

11 (4) Program completion rates.

12 (5) The schedule of tuition and fees required for each term,
13 program, course of instruction, or degree offered.

14 (6) Financial information demonstrating compliance with
15 subdivisions (b) and (c) of Section 94804 and subdivisions (b) and
16 (c) of Section 94855, if applicable.

17 (7) Institutions having a probationary or conditional status shall
18 submit an annual report reviewing their progress in meeting the
19 standards required for approval status.

20 (8) A statement indicating whether the institution is or is not
21 current on its payments to the Student Tuition Recovery Fund.

22 (9) *A log of all written student complaints received and their*
23 *disposition.*

24 (10) *A log of all arbitrations or actions filed against the school*
25 *and their disposition, including, the monetary amount of any*
26 *settlement and any injunctive or other equitable relief provided*
27 *by the disposition. On request of the bureau, the documents*
28 *constituting any disposition of that matter shall be made available*
29 *to the bureau.*

30 ~~(9)~~

31 (11) Any additional information that the ~~council~~ bureau may
32 prescribe.

33 (b) *The information required to be reported by subdivision (a)*
34 *shall be provided in two electronic formats, one of which may be*
35 *in a form that cannot be changed, such as in a portable document*
36 *format (pdf.) file, and one of which shall be in a searchable*
37 *modifiable electronic format to be specified by the bureau, or if*
38 *none is specified, in a commonly available spreadsheet program*
39 *with any necessary narrative provided in a commonly available*
40 *word processing program.*

1 ~~(b)~~

2 (c) Colleges and universities operating under paragraph (6) of
3 subdivision (b) of Section 94739 shall comply with the reporting
4 requirements of paragraphs (1), (2), (3), and (5) of subdivision (a).

5 ~~(e)~~

6 (d) (1) Program completion rates and placement data shall be
7 reported in accordance with the standards and criteria prescribed
8 by the bureau pursuant to paragraphs (1) to (4), inclusive, of
9 subdivision (a) of Section 94816 and Section 94859, if applicable.

10 Based

11 (2) (A) *The data underlying the completion rates and placement*
12 *data reported pursuant to this subdivision shall also be provided,*
13 *including the name, address, and telephone number of each student*
14 *who enrolled in a program of instruction, including each student*
15 *who canceled or withdrew before completing the program; the*
16 *date upon which the student completed the program of instruction*
17 *if he or she completed the program; for each student counted as*
18 *a job placement, the name, address, and telephone number of his*
19 *or her employer, the name, address, and telephone number of the*
20 *person who provided to the institution the information regarding*
21 *the person's employment, the name, title, or description of the job,*
22 *the date upon which the student first reported for employment, the*
23 *duration of the student's employment, the number of hours the*
24 *student worked per week, the student's starting salary, and the*
25 *date or dates upon which the institution verified employment; if*
26 *any student was excluded from the completion or placement rate*
27 *calculations, a statement of the reason or reasons each of these*
28 *students was excluded; and if the student chose not to seek*
29 *employment and instead enrolled in another program to earn a*
30 *higher degree, the name and address of the institution in which*
31 *he or she enrolled, as well as the program in which he or she*
32 *enrolled.*

33 (B) *If the student is self-employed, the institution shall include*
34 *any documentation of self-employment, including, for example,*
35 *contracts, checks for payment, tax returns, social security*
36 *contribution records, records of accounts receivable or customer*
37 *payments, invoices for business supplies, rent receipts, appointment*
38 *book entries, business licenses, or any other information required*
39 *by the bureau that is a reliable indicator of self-employment. All*

1 *of this information shall be provided electronically in a format*
2 *prescribed by the bureau.*

3 (3) Based on the review of information submitted to fulfill the
4 requirements of this section, the bureau may initiate a compliance
5 review and may place the institution on probation pursuant to
6 subdivision (h) of Section 94901 and subdivision (i) of Section
7 94915, and may require evidence of financial stability and
8 responsibility pursuant to Sections 94804 and 94855, if applicable.

9 SEC. 3. Section 94809 of the Education Code is amended to
10 read:

11 94809. Each institution approved under this chapter shall
12 provide the ~~council~~ bureau with copies of all accrediting agency
13 reports, including preliminary reports and reports of visiting
14 committees, all audit reports prepared by the United States
15 Department of Education and student loan guaranty agencies,
16 including all preliminary reports, and the institution's written
17 responses to the reports described in this section, if applicable.
18 The institution shall provide a copy of each report within 15 days
19 of the institution's receipt of the report and a copy of the
20 institution's response within 15 days of the institution's submission
21 of its response. *By a general announcement on its Internet Web*
22 *site, the bureau may authorize or require these copies to be*
23 *provided electronically or in paper versions. Any documents*
24 *provided electronically under this section shall be indexed, with*
25 *each separate document that makes up the report or response*
26 *provided as a separate file.*

27 SEC. 4. Section 94854 of the Education Code is amended to
28 read:

29 94854. (a) Every institution shall meet all of the following
30 performance standards for each program offered during the
31 applicable time period described in subdivision (l):

32 (1) Sixty percent or more of the students who began the program,
33 did not cancel pursuant to Section 94867, and were originally
34 scheduled at the time of enrollment to complete the course during
35 that period, shall complete it.

36 (2) Seventy percent or more of the students who completed the
37 program within that period shall obtain employment starting within
38 six months after completing the course in the occupations or job
39 titles to which the course of instruction was represented to lead.
40 For the purpose of this subdivision, "program" or "program of

1 instruction” or “course” or “course of instruction” includes all
2 courses of instruction, however denominated, that are represented
3 to lead to the same or closely related occupations or job titles.

4 (b) Every institution shall meet all of the following performance
5 standards for all programs in the aggregate offered by the institution
6 at each of its campuses during the applicable time period described
7 in subdivision (l):

8 (1) Sixty percent or more of all the students who began the
9 programs did not cancel pursuant to Section 94867, and were
10 originally scheduled at the time of enrollment to complete these
11 programs during that time period, shall complete these programs.

12 (2) Seventy percent or more of all the students who completed
13 the programs within that time period shall obtain employment,
14 starting within six months after completing the programs, in the
15 occupations or job titles to which the programs of instruction were
16 represented to lead.

17 (c) For the purposes of subdivisions (a) and (b), students who,
18 as documented by the institution, have been prevented from
19 completing the program or programs of instruction due to death,
20 disability, illness, pregnancy, military service, or participation in
21 the Peace Corps or Domestic Volunteer Service shall be excluded
22 from the computations used to determine whether an institution
23 has met the performance standards prescribed by those
24 subdivisions. Except as provided in Section 94874, an institution
25 shall not disclose the records maintained pursuant to this
26 subdivision unless production of those records are required by any
27 law, subpoena, or court order, or are necessary for a certified public
28 accountant to prepare a compliance report pursuant to subdivision
29 (g) of Section 94870.

30 (d) An institution shall meet the standards prescribed in
31 subdivisions (a) and (b) at each site at which the program or
32 programs are offered. A determination of whether a particular site
33 meets the standards prescribed in subdivisions (a) and (b) shall be
34 based only on students who attended that site. An institution shall
35 be subject to subdivisions (f) and (g) only with respect to its sites
36 that fail to meet the standards prescribed in subdivisions (a) and
37 (b).

38 (e) (1) This subdivision applies only to institutions in which
39 15 or fewer students began a program or programs, did not cancel
40 pursuant to Section 94867, and were originally scheduled to

1 complete the program or programs within the applicable time
2 period described in subdivision (l).

3 (2) If an institution described in paragraph (1) fails to meet any
4 of the standards prescribed in subdivision (a) or (b), but would
5 have met that standard if one additional student had completed or
6 obtained employment, the institution shall be deemed to comply
7 with this section. If an institution described in paragraph (1) fails
8 to meet the standard for review established in subdivision (f), but
9 would have met the standard if one additional student had
10 completed or obtained employment, the institution shall be deemed
11 subject to subdivision (f).

12 (f) (1) This subdivision applies only to an institution or any site
13 that fails to meet any of the following:

14 (A) Any of the standards established in subdivision (a) or (b)
15 by 10 percent or less.

16 (B) Any of the standards established in subdivision (a), but has
17 a placement rate of 42 percent or more for the course in which the
18 standard was failed.

19 (C) Any of the standards established in subdivision (b), but has
20 a placement rate of 42 percent or more for all courses in the
21 aggregate.

22 (2) If the institution's failure to meet the standards prescribed
23 in subdivision (a) or (b) was not caused by a violation of this
24 chapter, the ~~council~~ bureau shall order, after notice and, if
25 requested, after a hearing, that the institution implement a program
26 to achieve compliance with subdivisions (a) and (b). The program
27 may include any of the following:

28 (A) Limitations on enrollment for specific courses of instruction.

29 (B) Revision of admission policies and screening practices to
30 ensure that students have a reasonable expectation of completing
31 courses and obtaining employment.

32 (C) Increased academic counseling and other student support
33 services.

34 (D) Improved curricula, facilities, and equipment.

35 (E) Revisions to the qualifications and number of faculty.

36 (F) Improved job placement services, including revisions to the
37 qualifications and number of job placement personnel and the
38 expansion of contacts with employees and state and federal
39 employment development agencies.

(G) Submission of a compliance report prepared by a certified public accountant, who is not an officer, director, shareholder, or employee of the institution, any parent corporation or any subsidiary, prepared pursuant to an attestation engagement in accordance with the Statements on Standards for Attestation Engagements of the American Institute of Certified Public Accounts, which states that the institution has complied with the performance standards in this section within the period set forth in paragraph (4).

(H) Any other reasonable procedure required by the ~~council~~ *bureau*.

(3) If an institution is subject to an order pursuant to paragraph (2), the ~~council~~ *bureau* may require that the institution file information or reports requested by the ~~council~~ *bureau*. The ~~council~~ *bureau* may also monitor the institution in the manner provided in subdivision (d) of Section 94878.

(4) (A) An institution subject to an order pursuant to paragraph (2) shall satisfy the standards established in subdivisions (a) and (b) within the period designated by the ~~council~~ *bureau*. This period shall not extend more than one year beyond the length of the program for noncompliance with the standards prescribed by subdivision (a) or more than one year beyond the longest program for noncompliance with the standards prescribed in subdivision (b).

(B) If the institution fails to satisfy the standards of subdivision (a) within the period designated by the ~~council~~ *bureau*, the ~~council~~ *bureau* shall order the institution to cease offering the course of instruction at the campus where that program was offered. If the institution fails to satisfy the standards of subdivision (b) within the period designated by the ~~council~~ *bureau*, the ~~council~~ *bureau* shall revoke the institution's approval to operate, or approval to operate the branch or satellite campus where the programs were offered. No action shall be taken pursuant to this paragraph without notice, and, if requested by the institution, a hearing. In taking action pursuant to this subparagraph, the bureau shall consider the impact, if any, of changes in the employment rate in the area served by this institution.

(g) If an institution fails to meet any of the standards established in subdivision (a) and does not have a placement rate of 42 percent or more for the program in which the standard was failed, the

~~council~~ bureau shall order the institution to cease offering the program of instruction at the campus where the course was offered. If the institution fails to meet any of the standards prescribed in subdivision (b) and does not have a placement rate of 42 percent or more for all programs in the aggregate, the ~~council~~ bureau shall revoke the institution's approval to operate, or approval to operate the branch or satellite campus where the programs were offered. No action shall be taken pursuant to this subdivision without notice and, if requested by the institution, a hearing.

(h) (1) The institution shall have the burden of proving its compliance with this section.

(2) The ~~council~~ bureau shall investigate the institution whenever the ~~council~~ bureau deems appropriate to verify the institution's compliance with this section. The investigation shall include an examination of the records maintained by the institution pursuant to subdivision (j) and contacts with the students and employers.

(3) If an institution willfully falsifies, alters, destroys, conceals, or provides untrue or misleading information relating to compliance with this section, including records maintained pursuant to subdivision (j), the ~~council~~ bureau shall revoke the institution's approval to operate. No action shall be taken pursuant to this paragraph without notice and, if requested by the institution, a hearing. This provision supplements but does not supplant any other penalty or remedy provided by law.

(4) The institution shall pay all reasonable costs and expenses incurred by the ~~council~~ bureau in connection with this section at a time designated by the ~~council~~ bureau.

(i) If the ~~council~~ bureau, pursuant to subdivision (f) or (g), orders an institution to cease offering a program of instruction or revokes the approval of an institution to operate or operate a branch or satellite campus, the institution may apply, no sooner than two years after the order to cease or the revocation became effective, for approval to offer that program or for approval to operate. Before the ~~council~~ bureau may grant any approval, the institution shall establish that it complies with this chapter, each program satisfies all of the minimum standards prescribed by this chapter, and the circumstances surrounding the institution's failure to meet the requirements of this section have sufficiently changed so that the institution will be substantially likely to comply with this section.

(j) An institution shall maintain records of the name, address, and telephone number of students who enroll in a program of instruction, including students who begin the program and students who cancel pursuant to Section 94867, and of students who graduate from that program of instruction. An institution shall inquire whether students who complete a program of instruction obtain employment starting within six months of completing the program in the occupation to which the program of instruction is represented to lead and continue in employment for a period of at least 60 days. The inquiry shall be documented by a list indicating each student's name, address, and telephone number; the employer's name, address, and telephone number; the name, address, and telephone number of the person who provided the information regarding the student's employment to the institution; the name, title, or description of the job; the date the student obtained employment; the duration of the student's employment; information concerning whether the student was employed full-time or part-time including the number of hours worked per week; and the names, addresses, and telephone numbers of students who choose not to seek employment and instead enroll in another program to earn a higher degree, as well as the name and address of the institution in which they enroll. If the student is self-employed, the list shall include reliable indices of self-employment such as contracts, checks for payment, tax returns, social security contribution records, records of accounts receivable or customer payments, invoices for business supplies, rent receipts, appointment book entries, business license, or any other information required by the bureau that is a reliable indicator of self-employment.

(k) For the purposes of this section, the following definitions shall apply:

(1) "Annual report" means the report required to be filed pursuant to Section 94861.

(2) (A) "Employment" means either of the following:

(i) Full-time employment *with a single employer* for at least 32 hours per week for a period of at least 60 days in the occupations or job titles to which the program of instruction is represented to lead.

(ii) Part-time employment *with a single employer* for at least 17.5 hours, but less than 32 hours, per week for a period of at least

1 60 days in the occupations or job titles to which the program of
2 instruction is represented to lead, provided *that* the student
3 completes a handwritten statement at the beginning of the program
4 and at the end of the program which states that the student's
5 educational objective is part-time employment. The institution
6 shall not require that any student complete such a statement or
7 provide any incentive, financial or otherwise, to any student for
8 signing such a statement.

9 (B) The bureau shall adopt regulations to specify the job tasks,
10 other than those directly related to generating income, which may
11 be counted towards meeting the hour requirements for full-time
12 and part-time employment for students who are self employed.

13 (3) "Hearing" means a hearing pursuant to the requirements of
14 either Section 94965 or 94975.

15 (4) "Placement rate" means the percentage of students who
16 fulfilled the provisions of the following two subparagraphs:

17 (A) Began the program, did not cancel pursuant to Section
18 94867, and were originally scheduled at the time of enrollment to
19 complete the program during the applicable time period described
20 in subdivision (I).

21 (B) Completed the program, within the applicable time period
22 described in subdivision (I) and started employment within six
23 months of completing the program or, if employment requires
24 taking a state licensure examination for which only graduates of
25 the program may apply, then (i) started employment within six
26 months of the date on which the state licensing agency announces
27 the results of the first licensure examination reasonably available
28 to students who completed the program, or (ii) started employment
29 within six months of the next reasonably available licensure
30 examination date for any student who did not receive passing
31 results on the first exam. The time period determined pursuant to
32 this subparagraph shall not exceed 10 months beyond the date of
33 completion of the program of instruction. The institution shall
34 retain a record of the date of the first reasonably available licensure
35 exam following the completion date of each student, the date the
36 licensure agency announces the results of the first reasonably
37 available licensure exam, and the date of the next reasonably
38 available licensure exam for each student who did not pass the
39 first exam.

1 (5) “Reporting period” means the institution’s fiscal year or any
2 year period designated by the ~~council~~ *bureau* to be covered in the
3 institution’s annual report.

4 (6) “Time period” means the two most recent calendar years
5 that ended at least eight months before the end of the institution’s
6 applicable reporting period.

7 (l) (1) An institution’s compliance with the standards prescribed
8 in subdivisions (a) and (b) shall be determined as of the date on
9 which the institution’s reporting period ends.

10 (2) The institution shall report its determination of its
11 compliance with the standards established in subdivisions (a) and
12 (b) in each annual report.

13 (3) The ~~council~~ *bureau* may adjust the meaning of “time period”
14 if the ~~council~~ *bureau* finds that an adjustment is necessary for the
15 efficient administration of this section. If any adjustment is made
16 in the annual reporting periods, the ~~council~~ *bureau* may adjust
17 when the time period commences, but shall not alter the two-year
18 length of the period.

19 (m) In determining the placement rate for a particular time
20 period as described in subdivision (l), an institution may exclude
21 from the determination a student whose completion date was
22 extended beyond that time period if the extension was requested
23 by the student in writing on an enrollment agreement modification
24 request form that meets specifications established by the ~~council~~
25 *bureau*. The form shall include instructions to the student indicating
26 that, when signed by both the student and the institution, the request
27 modifies the existing agreement. The form shall not be valid unless
28 it provides space for the student to complete a handwritten
29 description, in the student’s handwriting, of the reasons
30 necessitating the extension that are distinctly personal to the student
31 and unrelated to the provision of educational services or activities
32 of the institution, contains the new expected completion date of
33 the program, and is signed and dated by the student and the
34 institution. The institution shall provide the student a copy of the
35 signed modification request form. The institution shall retain the
36 student’s original written request to modify the enrollment
37 agreement with the original enrollment agreement. A student
38 excluded from the placement rate determination for a particular
39 time period pursuant to this subdivision shall be included in the
40 placement rate determination for the next immediately following

1 time period. The institution shall state in the institution's annual
2 report the number of students for whom an extension was granted.

3 (n) In determining the placement rate for a particular time period
4 as described in subdivision (l), an institution may exclude from
5 the calculation a student who either:

6 (1) Decides not to obtain employment and within six months
7 of completing the program enrolls in a program to continue his or
8 her education to obtain a higher level degree that is related to, or
9 provides for the student to use, the same skills or knowledge
10 obtained in the program the student completed.

11 (2) Is in possession at the completion of the program of a valid
12 United States Immigration and Naturalization Service Form I-20.

13 (o) In determining the placement rate for a particular time period
14 as described in subdivision (l), an institution may count a student
15 who drops out of the program after completing at least 75 percent
16 of the program because the student has obtained employment which
17 lasts for a period of at least 60 days in the occupations or job titles
18 to which the program of instruction is represented to lead. No more
19 than 10 percent of the institution's total number of placed students
20 may be counted pursuant to this subdivision.

21 (p) If an order to cease offering a program or a revocation is
22 issued pursuant to this section, the ~~council~~ *bureau* may permit the
23 institution to continue to offer the program or programs of
24 instruction to the students who had begun the course or courses
25 before the effective date of the order or revocation or may order
26 the institution to cease instruction and provide a refund of tuition
27 and all other charges to students.

28 SEC. 5. Section 94952 of the Education Code is amended to
29 read:

30 94952. (a) The Attorney General, or any district attorney, or
31 city attorney, may make investigations as may be necessary to
32 carry out this chapter, including, but not necessarily limited to,
33 investigations of complaints, *and may obtain from the bureau,*
34 *without charge, any document related to an institution that may*
35 *be useful to an investigation of that institution.* The bureau may
36 jointly bring actions as necessary to enforce this chapter, including,
37 but not necessarily limited to, civil actions for injunctive relief. In
38 actions brought pursuant to this subdivision, the bureau shall be
39 represented by the Attorney General.

1 (b) The Attorney General shall represent the bureau in the
2 following administrative proceedings arising under this chapter:

3 (1) Suspension or revocation of an institution's approval.

4 (2) Denial of an institution's application for approval.

5 (3) An appeal of a conditional approval to operate issued
6 following a review of an institution's application for approval.

7 (c) Nothing in this section or this chapter shall preclude the
8 Attorney General, or any district attorney or city attorney, from
9 any of the following:

10 (1) Bringing any action on behalf of the people as he or she is
11 empowered by law to bring, including, but not necessarily limited
12 to, actions based upon alleged violations of Chapter 5 (commencing
13 with Section 17200) of Part 2, and Chapter 1 (commencing with
14 Section 17500) of Part 3, of Division 7 of the Business and
15 Professions Code.

16 (2) Conducting investigations necessary to determine whether
17 there have been violations of law specified in paragraph (1).

18 (3) Conducting any investigations that he or she is authorized
19 to conduct, including, but not necessarily limited to, investigations
20 authorized under Section 11180 of the Government Code.

21 (4) In the case of the Attorney General, delegating his or her
22 representation authority under subdivision (b) to staff attorneys of
23 the bureau.

24 (5) Entering into an agreement or understanding with the bureau
25 with respect to representation in any judicial or administrative
26 proceeding not expressly enumerated herein.

27 SEC. 6. This act shall not become operative unless and until
28 an act amending Section 94999 of the Education Code to change
29 the date of the repeal of the Private Postsecondary and Vocational
30 Education Reform Act of 1989 to a date that is after January 1,
31 2008, is chaptered and becomes operative.